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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 85-702

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

RAUL MADRID, et al

Petitioners

v.

ANTONIA MONETONGO, et al

Respondents

BRIEF IN OPPOSITION

The Respondents, 330 named Mexican farm workers, respectfully request that this court deny the petition for certiorari to review of the Fifth Circuit's opinion in this case. That opinion is reported at 765 F.2d 1353.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither The Decision Below Nor The Record Raises The Questions Presented In The Petition

The first question raised by the petition for certiorari is whether the tolling rule of American Pipe and Constr. v. Utah, 414 U.S. 538 (1974) tolls the statute of limitations with respect to persons and claims not part of the original suit. Petitioners

argue that those farm workers who joined the suit after denial of class certification cannot claim the benefit of American Pipe tolling against the individual members of the Presidio Valley Farmers Association since those members were not named in the original class action counterclaim. Petitioners also claim there can be no tolling with respect to Respondents' Farm Labor Contractor Registration Act claims since those claims were also not contained in the original counterclaim.

The Fifth Circuit did not decide the tolling question, nor could it, since the record does not allow decision of the question. In formulating their question for review petitioners have ignored the effect of the district court's Rule 15(c) decision. Before the class was denied, the original farm worker plaintiffs amended their counterclaim to add the members of the PVFA and the FLCRA claims. The district court held that those amendments related back "to the date of the original pleading" pursuant to Rule 15(c). Thus, for purposes of limitations, the amendments are treated as if they were filed at the time of the original counterclaim. It was only after the amendments were allowed that the the class was denied and the question of tolling arose. Because the allegations in the amended complaint related back "to the date of the original pleading", the district court correctly determined that equitable tolling applied to the claims in the amended counterclaim as if they had been filed at the time of the original counterclaim. Once that is understood, then the question presented by Petitioners -- applying tolling to parties and claims which don't relate back to the date of the original

filing -- ceases to be a question in the case. The abstract question presented by Petitioners is not raised by this record and cannot be decided on this record.

It should be noted as well that several of the cases on which Petitioners rely, including Arreil v. Ramsey, 550 F.2d 774 (2nd Cir. 1977) and Wachovia Bank and Trust Co. v. Nat'l Student Marketing, 461 F.Supp. 999 (D.D.C. 1978) aff'd 650 F.2d 342 (D.C. Cir.) cert den. 452 U.S. 954 (1980) were overruled by this courts' decision in Crown Cork and Seal Co. v. Parker, 462 U.S. 345 (1983).

Petitioners second question is also not properly before the court. Petitioners argue that there was no mistake as to the identity of the propery party and therefore Rule 15(c) could not apply. However, the record is clear that there was such a mistake. At the time they filed their original counterclaim, Respondents thought the Association had sued as representative of its members and that a counterclaim against PVFA was sufficient to plead a counterclaim against the PVFA members.[1] The court found that Respondents were mistaken in this belief, but allowed Respondents' claims against the PVFA members to relate back because of the mistake. Thus, Petitioners second question -- whether Rule 15(c) permits relation back when there has been no mistake of identity -- is also not presented by this case.

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[1] Respondents still maintain that the PVFA members were parties in this sense in the original suit, although the granting of relation back under rule 15(c) made it unnecessary to decide that issue.

The decision to allow relation back under Rule 15(c) was well within the discretion of the district court and hardly presents a question worthy of this Court's consideration.

2. The Questions Presented Are Not Important Enough To Merit Review.

The question raised by Petitioners, particularly the question regarding Rule 15(c), turn on an extremely convoluted and fact-bound record. Even if the questions raised were in fact presented by this record, any decision rendered in the context of this record would have little, if any, precedential value. In these circumstances, certiorari should not be granted.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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